

MEDICAL PROVIDER NETWORKS, DWC FORM 1 AND NOPE	RULEMAKING COMMENTS 3rd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter is mindful and appreciative of the changes the Division has made in the latest version of the proposed Medical Provider Network and Employee Information Regulations. The draft regulations are another part of the division's 12-point plan to re-craft regulations to streamline and relieve the administrative burdens and costs in California's workers' compensation system however there are still requirements in the draft regulations that are in direct conflict with the goal of this plan.	Joe Carresi Project Manager WC Division Southern California Edison Company May 19, 2010 Written Comment	Reject. Significant changes have been made to streamline the notice process and reduce the costs. All notices cannot be eliminated due to the need to ensure injured workers have sufficient information regarding their rights.	None.
9767.12	<p>The proposed regulations require that the complete MPN notice be provided either in writing, or electronically, including email at work, to covered employees at the time of injury or when an employee with an existing injury is being transferred into the MPN. In addition, the complete notice is to be posted in English and Spanish in close proximity to the posting notice required by LC §9881.</p> <p>Commenter opines that the requirement to provide both written</p>	Joe Carresi Project Manager WC Division Southern California Edison Company May 19, 2010 Written Comment	<p>Reject.</p> <p>Just posting provides inconsistent notice to all covered employees. All notices except for the full employee notification given at time of injury have been reduced to a paragraph that can be sent electronically or on a paystub and have been limited in their distribution to further reduce administrative costs to not make them burdensome.</p>	None.

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	<p>and posted notices will add additional burden and cost to employers, especially large employers like Southern California Edison that have a considerable number of work locations in the state of California.</p> <p>Commenter strongly recommends that the Division either: (1) <i>Delete the new requirement to post the multi-page complete MPN notice; or (2) Allow the notice to be provided in writing, electronically, OR posted.</i></p>			
Regulation Effective Date	<p>Commenter reiterates it prior suggestion that the effective date of these regulations be coordinated with the proposed pharmacy benefit network regulations. Revisions made to both sets of regulations should be considered when the DWC revises the Written Notice to New Employees and the Posting Notice. These regulations should not become effective for a minimum of 120 days after the date of adoption.</p>	<p>Joe Carresi Project Manager WC Division Southern California Edison Company May 19, 2010 Written Comment</p>	<p>Reject. It is not clear when and if the proposed pharmacy regulations will become permanent regulations. Employer and insurers will be given a reasonable period of time to make the required MPN regulatory changes to the employee poster and notice materials.</p>	<p>The proposed MPN regulatory changes will not go into effect until 60 days after the regulations are adopted.</p>
General Comment on MPNs	<p>Commenter would like to express her opposition against granting insurance carriers additional control over patients' selection of their physician. As a private citizen who works in</p>	<p>Nedi McKnight Allied Medical Group May 27, 2010 Written Comment</p>	<p>Reject. Comments are outside the scope of this rulemaking.</p>	<p>None.</p>

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	<p>healthcare, commenter is passionate about patients' rights and access to medical care.</p> <p>Commenter has worked with injured workers and the physicians who care for them in California since 1990. Currently, she works for Allied Medical Group, Inc., in the Scheduling Department. One of her duties is to manage applications for our physicians hoping to join the various Medical Provider Networks. While working in that capacity since the inception of the MPN system, it has been her observation that the physicians in our medical group are being systematically removed or deselected from many Medical Provider Networks.</p> <p>The Medical Provider Networks for Travelers, Employers Comp, Macy's West, First Health Primary, Boeing, and the L.A.U.S.D. are just a few of the networks that have deselected or eliminated the physicians of Allied Medical Group.</p> <p>Commenter states that the Board</p>		Reject. Comments are outside the scope of this rulemaking.	None.

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	<p>Certified orthopaedic surgeons on staff at Allied Medical Group are extremely well qualified; all are fellowship trained in their respective specialties. More than that, they are compassionate physicians experienced in the treatment of injured workers. They fully understand the regulatory system governing their participation in the California workers' compensation system, including the utilization review procedure and proper application of the California MTUS and ACOEM treatment guidelines. Most are State of California Qualified Medical Examiners.</p> <p>These same physicians have not been eliminated from Blue Cross, Aetna, CIGNA, Medicare or any other private insurance provider network. It is curious to her why employers and their carriers are allowed to exclude or deselect these well qualified physicians from workers' compensation Medical Provider Networks when no such exclusion or deselection has occurred in non-employer based networks. Certainly there should not be a discrepancy in</p>		Reject. Comments are outside the scope of this rulemaking.	None.

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	<p>the variety of well-qualified physicians provided to any patient, regardless of whether they have been injured at work or are seeking care on a private basis. Unfortunately, with the employer controlled Medical Provider Networks, this seems to be exactly what is happening.</p> <p>The physicians with whom commenter works have been repeatedly turned down from joining existing Medical Provider Networks. Some of the reasons they have been given are that the MPN is full for the geographical area, or that providers are not accepted without a nomination from an employer, adjuster or defense attorney. Both Medex and Wellpoint have declined their physicians due to lack of nomination.</p> <p>It seems counterintuitive to empower an employer or claims person to control the nominations of physicians to their networks when these same physicians have otherwise met all California standards for licensure, have met all standards for inclusion in their respective specialty boards, and</p>		Reject. Comments are outside the scope of this rulemaking.	None.

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	<p>have continuously met the standards for care and treatment of injured workers within the California workers' compensation arena. In order to ensure that injured workers have a variety of physicians with a wide range of experience and points of view, it is essential that a physician's qualifications and actual record of care stand as the only fair criteria for nomination or acceptance to a Medical Provider Network. Allowing employees of insurance companies to act as non-biased judges of the quality and scope of a physician's medical performance has failed to provide injured workers with access to many well-qualified physicians who are kept out of networks based on rationale that has nothing to do with their ability to offer outstanding care to injured workers.</p> <p>Further, as they exist now, many Medical Provider Networks do not consider physicians with subspecialty qualifications. Injured workers may require an orthopaedic surgeon that specializes in shoulder surgery or hand surgery, and often their own treating</p>		Reject. Comments are outside the scope of this rulemaking.	None.

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	<p>physician may ultimately refer the injured worker to these subspecialists. It would be more efficient to allow these physicians to be considered for acceptance to the Medical Provider Networks based on their subspecialty qualifications from the onset. A good example is State Compensation Insurance Fund, who has declined requests from Dr. Khiem Dao, a Board Certified orthopaedic surgeon with a Certificate of Added Qualification in Hand Surgery, and from Dr. Juan Frisancho, a Board Certified orthopaedic surgeon who is fellowship trained in Adult Joint Reconstruction.</p> <p>Commenter strongly recommends reform of the current Medical Provider Network rules, to stop unfair practices by insurance carriers and employers that limit the access of injured workers to qualified, non-biased and experienced physicians</p>		Reject. Comments are outside the scope of this rulemaking.	None.
9767.12(f)(3)	Current workflow processes require health management organizations (HMOs), preferred provider organizations (PPOs) and individual providers to report changes to the MPN administrator within specific	Kathleen Burrows Claims Operations Manager State Compensation Insurance Fund May 27, 2010	Reject.	None.

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	<p>timeframes so the MPN administrator can update provider directories in a timely manner. The MPN administrator should be able to meet the 60-day timeframe for updating the provider directory as outlined in the proposed regulations when information regarding changes is provided directly by an HMO, a PPO or an individual provider.</p> <p>Issues could arise when provider listing inaccuracies are reported through other venues, such as injured covered employees. When a covered employee reports that a provider is deceased or is no longer treating workers' compensation patients, the MPN administrator must verify the accuracy of the reported information prior to updating the provider directory. Even if the MPN provider directory is updated monthly, the MPN administrator may not be able to meet the 60-day timeframe outlined in the proposed regulations if he or she is unable to verify the information timely.</p> <p>Commenter recommends the</p>	Written Comment	The proposed regulatory 60-day time frame is a reasonably sufficient period of time for an MPN to verify whether a provider is available to treat workers' compensation patients. This time frame must be balanced against the compelling need for a worker to have timely access to MPN providers who can provide the necessary treatment.	None.

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	<p>following revision:</p> <p>(3) How to review.....listing is kept accurate. Each provider listing shall include a phone number and an email address for reporting of provider listing inaccuracies. If a listed provider becomes deceased or is no longer treating workers' compensation patients at the listed address the provider shall be taken off the provider list within 60 days of notice to the information being verified by the MPN network administrator;</p>		Reject. The proposed regulatory 60-day time frame is a reasonably sufficient period of time for an MPN to verify whether a provider is available to treat workers' compensation patients. This time frame must be balanced against the compelling need for a worker to have timely access to MPN providers who can provide the necessary treatment.	None.
9767.16(b) and (c)	<p>Sections 9767.16(b) and (c) are related. Section (b) indicates when an MPN change in coverage notice is needed, who is to receive this notice and what information is required in the notice. In Section (c), the DWC suggests language to meet the change of MPN coverage notice requirements.</p> <p>If an MPN Applicant is changing MPN coverage to a different MPN, providing the information required in Section 9767.16(b)(1) – (5) and using the language suggested in Section 9767.16(c) is appropriate; however, the requirements under Section</p>	Kathleen Burrows Claims Operations Manager State Compensation Insurance Fund May 27, 2010 Written Comment	Reject.	None.

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	<p>9767.16 are not appropriate when the change of MPN coverage is due to a change in insurance carriers by the insured employer.</p> <p>The proposed language in Section 9767.16 (b) states that if an insured employer changes MPN coverage, the new MPN Applicant must provide written notification of the change to every <u>injured</u> covered employee. By definition, under Section 9767.1, an insured employer cannot be an MPN Applicant; rather, the insured employer's insurance carrier is the MPN Applicant. Consequently, an insured employer cannot terminate, cease use of, or change medical provider networks – the insured employer can only change insurance carriers. Additionally, workers' compensation claims filed under a policy year with one insurance carrier are not transferred to the new insurance carrier when insurance coverage changes. Since the new MPN does not apply to a covered employee who sustains an injury prior to the MPN change, he or she will continue to receive treatment under</p>		<p>Reject.</p> <p>The commenter is incorrect that the change of MPN notice does not apply when there is a change of MPN due to a change of insurers by employers.</p> <p>Although an insured employer cannot be an MPN Applicant, an insured employer can still change from using one MPN to another or terminate or cease using an MPN. Thus, an insured employer's actions can trigger the application of the termination/cessation or change of MPN notice requirements.</p> <p>The commenter is also incorrect that claims are not transferred to the new insurance carrier because sometimes they are. Conversely, sometimes the old MPN does continue to cover claims that arose during the period of coverage. Thus the</p>	None.

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	<p>the previous MPN coverage. Thus, change in MPN coverage notices from the new MPN Applicant to <u>injured</u> covered employees is unnecessary.</p> <p>The proposed language in Section 9767.16(b)(3) states, “The worker should check with the worker’s claims adjuster for more information.” In addition, the proposed language provided by the DWC in Section 9767.16(c) indicates that the injured covered employee should, “Check with your claims adjuster.” Since this information will only be provided to <u>injured</u> covered employees, it is reasonable to expect that the injured covered employee will contact the claims adjuster who was assigned to his or her claim with the former insurance carrier rather than the claims adjuster of the new insurance carrier/MPN Applicant. If an injured covered employee contacts his or her former claims adjuster, the adjuster may not be able to correctly or appropriately answer his or her questions, and this may lead to confusion.</p>		<p>language proposed must be broad enough to encompass both situations.</p> <p>An employee’s claims adjuster should know whether or not the worker should be treating under the old or new MPN as they will need this information to handle the claim properly. Even if the claims adjuster is not clear, the worker can always contact the new MPN contact through the information provided on the change of MPN notice and the new MPN employee notification as needed to answer coverage questions.</p>	<p>None.</p> <p>None.</p>

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	When the change of MPN coverage is due to the insured employer changing insurance carriers, commenter believes if an MPN coverage notice is required, it should be provided to all covered employees as outlined in Section 9767.12.		Reject. The proposed distinction does not make sense. To further reduce costs, the change of MPN notice will only be given to those workers who will be most affected, injured workers who will most probably need to use the new MPN.	None.
9767.16(b)	<p>Commenter recommends amending the text in 9767.16(b) as follows:</p> <p>(b) If a MPN Applicant or insured employer is changing MPN coverage to a different MPN, the MPN Applicant that is providing the new MPN coverage shall ensure that every injured covered employee is provided written notice of the following information prior to the effective date of coverage under the that Applicant's MPN:</p>	Kathleen Burrows Claims Operations Manager State Compensation Insurance Fund May 27, 2010 Written Comment	Reject. Change of MPN still occurs when an insured employer changes MPNs so notice should be given.	None.
9767.16(c)	If commenter's recommendation regarding Section 9767.16(b) is adopted, no changes to Section 9767.16(c) are required. If commenter's recommended change in Section 9767.16(b) is not adopted, State Fund recommends amending the	Kathleen Burrows Claims Operations Manager State Compensation Insurance Fund May 27, 2010 Written Comment	<p>Reject.</p> <p>The change of MPN notice will only be given to those who will be most affected by the change, which are those workers who are already</p>	None.

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	<p>language as follows:</p> <p>(c) The following language may be provided in writing to injured covered employees to give the required notice of the change of MPN coverage: “Unless you predesignated a physician or medical group prior to injury, your new work injuries arising on or after <INSERT EFFECTIVE DATE OF NEW MPN> will be treated by providers in a new Medical Provider Network, <INSERT NEW MPN NAME>. If you have an existing injury, you may be required to continue care under your prior MPN or you may be required to change to a provider in the new MPN. Check with your claims adjuster. For periods when you are not covered under a MPN, you may choose a physician 30 days after you’ve notified your employer of your injury. You may obtain more information at <INSERT MPN CONTACT PHONE NUMBER, ADDRESS, EMAIL ADDRESS, AND AN MPN WEBSITE (optional)> .”</p>		injured and need treatment through the MPN.	
9767.12(a)	Commenter notes the following language:	Mark E. Webb Vice President &	Accept.	None.

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	<p>“An employer or insurer that offers a Medical Provider Network Plan under this article shall notify every covered employee in writing about the use of the Medical Provider Network prior to the implementation of an approved MPN...”</p> <p>Commenter opines that this seems to indicate that whenever an insurer writes new business, an implementation notice is required. Its seemingly clear meaning, however, is muddled a bit by the second sentence, which will be discussed more fully, <i>post</i>.</p> <p>“...and at the time of hire for new employees.”</p> <p>The next part of this sentence requires an implementation notice “at the time of hire for new hires.” While it is reasonably clear that this part of the first sentence does not mean that a notice has to go out to all employees whenever there is a new hire, the change of “or” to “and” in this latest</p>	<p>Assistant General Counsel Pacific Compensation Insurance Company May 24, 2010 Written Comment</p>	<p>Accept. The commenter is correct that whenever a new insured employer uses its insurer’s MPN, the MPN needs to be implemented for the new client employer, which requires notice be given.</p>	

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	<p>iteration lends itself to this potentially absurd interpretation. While normally commenter would not engage the Division in a discussion of absurdities, the Appeals Board has periodically engaged in such flights themselves (<i>Ogilvie</i>) and thus care should be taken not to invite the Board or individual WCJs to succumb to the temptation of excessive parsing to the detriment of the Division's efforts. Commenter strongly recommends that this first sentence be split into two, as they do address two separate issues:</p> <p><u>An employer or insurer that offers a Medical Provider Network Plan under this article shall notify every covered employee in writing about the use of the Medical Provider Network prior to the implementation of an approved MPN. An implementation notice shall also be provided to a new employee at the time of hire.</u></p> <p>“An implementation notice is not required if the employer or insured employer is changing from one MPN to another MPN within 60</p>		Accept for clarity.	The sentence has been divided into two sentences for clarity.

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	<p>days.”</p> <p>“Insured employer” is not defined in the MPN regulations. Furthermore, “MPN” is defined as, “any entity or group of providers approved as a Medical Provider Network by the Administrative Director.” [8 CCR § 9767.1(a)(12)] Given the definitions in already existing regulations, the proposed regulation would seem to mean that an MPN implementation notice is required whenever an insured employer changes insurance companies [“MPN Applicant” as defined in 8 CCR § 9767.1(a)(14)] but not when an insurer (MPN Applicant) changes networks (MPN) provided the change is “within 60 days”. Limiting this sentence to the same insurer changing networks is the only way the current statutory and regulatory structure allows an “insured employer” to change MPNs.</p> <p>This “within 60-days” requirement begs the question of “60 days from when?” This would seem to cover a situation where the insurer is changing MPNs within the policy year or as a</p>		<p>“Insured employer” does not need to be defined. It is self explanatory and has the same meaning throughout the CA workers’ compensation system.</p> <p>The commenter is incorrect. The regulation requiring the implementation notice applies the same to insured employers and MPN Applicants.</p> <p>Reject. The proposed regulatory language is sufficiently clear. The time frame limits the situations in which an implementation</p>	<p>None.</p> <p>None.</p> <p>None.</p>

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	<p>condition of renewal. (See: Insurance Code § 11664 re: timeframes for nonrenewal of policies). If that is the case, then the regulations should specifically say so. Regardless of the intent, however, this language appears to be counter-intuitive. Assuming the poster can be properly changed over a weekend, is the Division really saying that an insurer (or self-insured employer) can change networks on Friday to be effective on the following Monday without an implementation notice but if an insurer changes networks to be effective in more than 60 days a full implementation notice is required? If that is the Division's conclusion, then it speaks more to the lack of need for the implementation notice at all rather than the need to limit its application. If this is indeed a situation where an employer is <i>not</i> changing insurance companies but rather the insurance company is changing MPN, it can reasonably be asked why there is a timeframe at all?</p> <p>As he has stated in prior comments to these regulations, the poster and the new hire letter required by Section</p>		<p>notice is required from when a change of MPN notice is required to further streamline the notice process. A change of MPN notice is required for changes of MPNs within 60 days and an implementation notice is required for changes to a new MPN after 60 days.</p> <p>Reject in part. Notice distribution has been further reduced which lowers the administrative costs.</p>	<p>None.</p>

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	<p>3551 are sufficient to place the employee on notice of who to contact in the case of an injury and of the benefits and requirements of the workers' compensation system. When the employee is injured, a timely complete notice should be provided to make certain there is no delay or refusal to provide benefits. Requiring notices beyond that, however, adds only to the cost and confusion of implementing this program. There is a fundamental difference between group health benefits where the employee needs to make many decisions regarding the carrier, provider, amount of financial participation (deductibles and co-pays) and type of plan (PPO, HMO, etc.) prior to enrollment and workers' compensation medical treatment where, unless the employee pre-designates a physician, the employee engages the system only if and when there is an injury. The notice provisions beyond the requirements of Labor Code §§ 3550 and 3551 are costly, time consuming, and likely irrelevant to the very workers they are intended to aid – except when the services are actually</p>		<p>Reject. Employees should receive individual notices to be made aware of when they are covered or not covered by an MPN as their right to select a physician of their choice is impacted.</p>	<p>None.</p>

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	<p>accessed.</p> <p>Commenter again recommends that all initial notices – including posting the MPN Notice – be deleted and that the complete MPN notice be provided only upon injury.</p> <p>“The MPN implementation notice shall be provided in English and also in Spanish to Spanish speaking employees.”</p> <p>Labor Code § 124, subdivision (b), states that, “Forms and notices required to be given to employees by the division shall be in English and Spanish.” There is no reason to qualify that. The proposed regulation should simply state that the MPN implementation notice shall be provided in English and Spanish. There is no reason to qualify this language. Commenter recommends that it read:</p> <p><u>The MPN implementation notice shall be provided in English and Spanish.</u></p>		<p>Reject. The notices required are not provided by the Division.</p>	<p>None.</p>
9767.12(a)	Commenter believes that the proposed	Stuart Baron, Esq.	Reject. The sentence is	None.

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	rule requires no need to do a full implementation notice by an employer if the change is to be made within 60 days is clear. This works well since most insured employers are getting their MPN coverage through an insurance company. It is not quite so clear as to a self-insured employer who is the one who carries the license. There could be a situation whereby the self-insured employer changes TPAs but keeps his/her current MPN in place. However, it appears that the employer would have to move for a modification of its license if they make a significant change to their program. An example would be where the TPA is bringing in a different vendor for the self-insured employer to use. Commenter's suggestion would be to break this sentence up into two parts dealing with each so there is no confusion.	Stuart Baron & Associates May 28, 2010 Written Comment	sufficiently clear and the issue raised regarding modification concerns a different section, 9767.8.	
General Comments	Commenter appreciates the improvements the Division has made in the latest iteration of section 9767.12. Particularly helpful are the changes requiring the implementation notice to be provided prior to MPN	Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute – CWCI	Accept.	None.

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	<p>implementation instead of 14 days prior to the implementation; and clarifying that an implementation notice is not required when the employer or insured employer is changing from one MPN to another within 60 days. Commenter opines that these changes will eliminate unnecessary interruptions and delays in treatment for injured employees and result in lower premiums, medical costs and administrative expenses for employers and claims administrators.</p> <p>The Division proposes that the complete MPN notice be provided either in writing, or electronically, including by email at work, to covered employees at the time of injury or when an employee with an existing injury is being transferred into the MPN. In addition, the complete notice is also to be posted in English and Spanish in close proximity to the section 9881 notice. If the complete MPN notice is provided to covered employees at the time of injury or transfer into the MPN, it is unnecessary, duplicative and costly to also post it. Commenter urges the Division to either: 1) delete the new requirement to post the multi-page</p>	<p>May 28, 2010 Written Comment</p>	<p>Accept.</p> <p>Reject. Just posting provides inconsistent notice to all covered employees. All notices except for the full employee notification given at time of injury have been</p>	<p>None.</p> <p>None.</p>

<p>implementation instead of 14 days prior to the implementation; and clarifying that an implementation notice is not required when the employer or insured employer is changing from one MPN to another within 60 days. Commenter opines that these changes will eliminate unnecessary interruptions and delays in treatment for injured employees and result in lower premiums, medical costs and administrative expenses for employers and claims administrators.</p> <p>The Division proposes that the complete MPN notice be provided either in writing, or electronically, including by email at work, to covered employees at the time of injury or when an employee with an existing injury is being transferred into the MPN. In addition, the complete notice is also to be posted in English and Spanish in close proximity to the section 9881 notice. If the complete MPN notice is provided to covered employees at the time of injury or transfer into the MPN, it is unnecessary, duplicative and costly to also post it. Commenter urges the Division to either: 1) delete the new requirement to post the multi-page</p>	<p>May 28, 2010 Written Comment</p>	<p>Accept.</p>	<p>None.</p>
		<p>Reject. Just posting provides inconsistent notice to all covered employees. All notices except for the full employee notification given at time of injury have been</p>	<p>None.</p>

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	<p>complete MPN notice; or 2) allow the notice to be provided in writing, electronically, <u>or</u> posted.</p> <p>Commenter recommends that the DWC/OAL consider instituting an “implement by date” for the changes in these regulations and notices as opposed to an “implementation on date” to permit some flexibility on when, for example, each employer in California must replace its section 9881/9881.1 notice to employees poster, section 9880 new hire pamphlets, DWC-1 claim form with revised NOPE, and the revised MPN notices. An “implement by date” will result in improved compliance and a smoother transition to the changed requirements.</p>		<p>reduced to a paragraph that can be sent electronically or on a paystub and have been limited in their distribution to further reduce administrative costs to not make them burdensome.</p> <p>Reject. The suggestion is not necessary. The effective date will be 60 days after adoption of the regulations. Employers or insurers can prepare for the changes as early as possible prior to the effective date.</p>	None.
9767.12(a)	<p>Commenter recommends the following revision:</p> <p>a) An employer or insurer that offers a Medical Provider Network Plan under this article shall <u>ensure that</u> notify every covered employee <u>is notified</u> in writing about the use of the Medical Provider Network prior to the implementation of an approved MPN and <u>that every</u></p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute – CWCI May 28, 2010 Written Comment</p>	<p>Reject. The suggested changes do not provide more clarity.</p> <p>Reject. Employers are already free to use a third party to</p>	<p>None.</p> <p>None.</p>

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	<p>subsequently hired covered employee is notified in writing about the use of the Medical Provider Network at the time of hire for new employees. The An implementation notice is not required if the employer is changing from, or insured employer is changing being changed from one MPN to another MPN within 60 days. The MPN implementation notice shall be provided in English and also in Spanish to Spanish speaking employees <u>who are not fluent in English</u>. The written MPN implementation notice to all covered employees shall, at a minimum, include the following information:</p> <p>Discussion</p> <p>The first changes in the opening sentence are recommended to clarify that an employer or insurer is free to use an agent to notify covered employees and to make the language consistent with the “shall ensure” language in section 9767.12(f)(3) and elsewhere in these regulations. The other changes in the sentence are needed to clarify that after every covered employee has been given prior notice of MPN</p>		<p>distribute the notices but it is the employer who has the ultimate responsibility. The proposed regulatory language is self explanatory. The first sentence has been split into two sentences for clarity.</p>	

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	<p>implementation, an employer or insurer is required to provide additional implementation notices to only subsequently hired <u>covered</u> employees at the time of hire.</p> <p>Changing from “an” to “the” in the second sentence will clarify that this “implementation notice” is the written notice alluded to in the first sentence. An insured employer can change insurers, but it cannot change MPNs independently from its insurer. The other recommended changes in this sentence will avoid confusion and dispute over whether the language intends to newly allow a self-insured employer to unilaterally change MPNs.</p> <p>An absurd but possible interpretation of the current version is that a notice in Spanish must be provided to employees whose first language is English but who have learned to speak Spanish. If the Division wishes to avoid confusion and disputes over such an interpretation, it can clarify here and elsewhere in these regulations that it is not necessary to provide implementation notices in Spanish to employees who are fluent in</p>		<p>Reject.</p> <p>It would be more burdensome for employers to determine which employees are Spanish speakers but fluent in English. The proposed regulation already requires that those who are Spanish speakers get notices in both English and Spanish so they would still receive it in whichever language they are more fluent in.</p>	<p>None.</p>

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	English.			
General Comment	<p>Commenter believes that rather than simplifying the process, many of the proposed revisions in this Notice will create more confusion for both workers and employers/insurers. The receipt of prompt, appropriate medical care is one of the most important benefits a worker can receive following a work injury or illness, yet few workers have any idea how to obtain the necessary treatment. Workplace posters can provide help, but in reality few workers actually read those posters and in addition a large percentage of workers don't work in an office setting where these posters are available.</p> <p>Consequently, the timely receipt of notices that provide an understandable explanation of benefits is critically important. Workers who understand their rights and obligations will be able to get treatment more promptly, which can help speed recovery and return to work, thereby limiting both medical and indemnity costs for the employer.</p>	<p>Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment</p>	<p>Reject.</p> <p>Workers will be receiving individual notices when most needed in addition to having the postings. Workers can always ask their employer if they have more questions. Workers will also be getting the information they need to use the MPN when they are injured and the information is more relevant to their immediate needs.</p> <p>Agree. Timely notices are still required and workers will get information on how to use the MPN when they will need medical treatment.</p>	<p>None.</p> <p>None.</p>

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	<p>Although commenter agrees that workers may be confused by some current forms, commenter strongly disagrees that the solution to this problem is to "simplify" the forms by reducing the amount of information provided to workers. Eliminating crucial information from forms, as proposed in these changes, does not simplify the system for workers. Instead, the failure to provide necessary information only causes more confusion, more delays, more disputes, and more costs.</p>			
9767.12(a)	<p>One proposed change to this subsection eliminates the requirement that the implementation notice be provided to covered employees "at least 14 days" prior to the implementation of the MPN. Under this proposal, the employer or insurer may notify workers as little as one day prior to implementation of the MPN. This change could deprive the worker of the right to predesignate a personal physician, or to continue care with a treating physician under certain</p>	<p>Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment</p>	<p>Reject. Workers still have the right to predesignate even after an MPN is implemented as long as they predesignate before injury.</p>	<p>None.</p>

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	<p>designated circumstances.</p> <p>Both the right to predesignate a treating physician and the right to continuity of care with an existing treating physician are important protections built into the MPN statutes by the Legislature. Allowing the employer or insurer to notify workers of the implementation of an MPN just one day before that implementation could, at best, delay the provision of needed treatment; and, at worst, deprive the worker of these rights.</p> <p>In previous letters commenter has urged the Division to revise the implementation notice to include information about the worker's right to continuity of care. The point here, however, is that the process of meeting the requirements set forth in Labor Code § 4616.2 can take weeks to complete (§9767.10 first requires notice to be sent to the worker and then gives the treating physician 20 days to provide a report justifying continuation of care). If workers are notified of the implementation of an MPN with only one day notice, the</p>		<p>Reject. The potential right to continue care with an existing non-MPN physician can be applied at any time and is not dictated by when an MPN is implemented but by the medical conditions of the employee.</p> <p>Reject. The commenter is confusing continuity of care which applies when an MPN physician is terminated from the MPN with transfer of care, which applies when an employee wishes to continue treating with a non-MPN physician. Transfer of care as well as continuity of care can be applied at any time after an MPN is implemented. The implementation of a new MPN should not delay treatment. Also, workers are required to be given notice of their right to predesignate at time of hire, so</p>	<p>None.</p> <p>None.</p>

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	<p>inevitable result will be delayed treatment for some workers. Likewise, some workers who are notified of the implementation of an MPN may decide at that time to predesignate a treating physician, but the unavoidable delay in completing that process may deprive the worker of this important right should an injury occur in the interim.</p> <p>Commenter does not believe that it creates a problem or that it adds additional costs to employers/insurers for workers to be notified at least 14 days prior to the implementation of the MPN. While commenter would prefer that the original 30 day notice requirement be reinstated, he recommends that the Division retain at least the 14 day requirement from the previous version of these regulations.</p> <p>Another change in subdivision (a) adds a new sentence stating that an implementation notice is not required if the employer or insured employer is changing from one MPN to another MPN within 60 days. Commenter</p>		<p>they should have already been on notice of their right to predesignate since they were hired.</p> <p>Reject. There is no statutory requirement for a notice period prior to MPN implementation and does not prevent workers from exercising their rights to predesignation or transfer of care.</p> <p>Reject. The suggested</p>	<p>None.</p> <p>None.</p>

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	<p>believes that this change may cause confusion for employers/insurers. Under § 9767.16(b), if an employer or insurer changes to another MPN, all <u>injured</u> covered employees must be given notice as set forth in that section. However, some employers or insurers may believe that the new sentence in § 9767.12(a) relieves them of this responsibility. In order to clarify this potential confusion, we suggest that the new sentence in this subdivision be amended by adding the words "as required by this section" after the initial phrase "An implementation notice...."</p> <p>Another change to subdivision (a) which requires that notices be provided in Spanish "to Spanish-speaking employees" conflicts with the statutory mandate in Labor Code section 124(b) to provide "forms and notices ... in Spanish and English." The statute is clear and unequivocal; all notices are required to be provided in <i>both</i> Spanish and English. Furthermore, from a practical standpoint, how is a MPN Applicant going to know which employees are</p>		<p>language does not provide more clarity.</p> <p>Reject. The notices required are not provided by the Division.</p> <p>Reject. If an employer is in doubt about which employees are Spanish speaking, the</p>	<p>None.</p> <p>None.</p>

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	<p>"Spanish-speaking?" And, in fact, with a significant portion of the workforce bilingual, what constitutes a "Spanish-speaking employee?" This provision will only create confusion and should be withdrawn. Similar changes in §§ 9767.12(d), 9767.12(g), 9767.16(a), and 9767.16(d) should also be deleted. In conformance with the statutory mandate, all notices should be required to be provided in <i>both</i> English and Spanish.</p>		<p>employer always has the option to distribute both English and Spanish to all employees.</p>	
9767.12(a)(3)	<p>This paragraph is a good example of how the proposed language will provide workers with insufficient information to allow them to exercise their rights. As amended, this paragraph will inform workers "that existing work injuries may be transferred into the new MPN" and will tell workers to check with the claims adjuster for more information. Both of these provisions have major flaws.</p> <p>It is correct that following the implementation of a MPN, a worker may transfer treatment of an existing injury to a physician within the MPN. However, the Legislature felt it was so</p>	<p>Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment</p>	<p>Reject. Because workers' cases are unique, the notice simply alerts workers generally to the possibility of the need for transfer of care and refers them to their claims adjusters for more specifics on their individual situations.</p> <p>Reject. Commenter is incorrect. Labor Code section 4616.2 does not prevent</p>	<p>None.</p> <p>None.</p>

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	<p>important that some workers be allowed to continue care with their current treating physician that a separate statutory section, Labor Code § 4616.2, was adopted to set out the rules for continuity of care. Unfortunately, the Legislature's intent in adopting this protection for injured workers will be met only if workers receive notice of the continuity of care rules at the time a new MPN is implemented.</p> <p>Consequently, commenter recommends that this paragraph be amended to inform workers "That treatment for existing work injuries may be transferred into the new MPN, or, under certain circumstances, may continue to be provided by your current treating physician." The injured worker must be provided with sufficient information so that he/she can utilize the continuity of care protections built into the MPN statutes by the Legislature.</p> <p>In addition, informing workers that they may contact a claims adjuster for more information is unrealistic. Even</p>		<p>continuity of care from applying after a new MPN is implemented. In fact, the MPN needs to be implemented for a provider to be terminated from the MPN for continuity of care to apply.</p> <p>Reject. The proposed notice language states the possibility sufficiently clearly. Once the worker is injured and will use the MPN, they will be provided with the continuity of care policy as that is the time when they may need to use it. Also, a worker should receive a notice from the employer should continuity of care be triggered due to a termination of their provider.</p> <p>Reject. The jobs of claims adjusters are to be the source</p>	<p>None.</p> <p>None.</p>

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	if it were possible for workers to easily reach claims adjusters – and this is simply not the case – it is grossly inefficient to set up a process under which claims adjusters are expected to serve as a basic information source for workers. That process can only add delay, add costs, and add frustrations to all parties. As recommended immediately below, commenter urges the Division to reinstate the requirement that full contact information be provided to workers, including the internet website address of the MPN and the email address of the MPN contact.		of information and to assist workers with their workers' compensation claims. Reject. The implementation notice was streamlined to differentiate it from the change of MPN notice and to not include the contact information so it can be widely distributed as a general alert to employees of their coverage under an MPN with limited need to tailor the notice.	None.
9767.12(a)(5)	Commenter objects to the changes in this paragraph. The proposed language deletes all references to contact information regarding the MPN, and instead proposes that the only source of contact information will be the workers' compensation poster or the employer. For a large number of workers these sources will be grossly inadequate. Many employers, and smaller	Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment	Reject. The employee will get the MPN contact information when it is needed, at time of injury and when the MPN is changed if the worker is injured. Also, the posting should have the MPN contact information should the worker need it prior to injury. Reject. All employers, irrespective of size, are	None. None.

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	<p>employers in particular, have little or no information about the MPN used by their insurer. Consequently, telling the worker to contact his or her employer is often meaningless. Furthermore, as noted earlier, many workers do not work in an office setting. These workers may occasionally have access to a workplace where a poster is located, but generally do not. Thus, the real life consequence of omitting the contact information from the implementation notice will mean that many workers will have no source for contact information about the MPN.</p> <p>Commenter does not believe that it will add any costs to add the information included in the deleted language to the implementation notice, and we strongly urge that this proposed change be deleted and the paragraph be reinstated as in the previous version of these regulations.</p>		<p>required to find a way to post the workers' compensation poster and if they are able to meet this requirement, they should be able to include an MPN posting next to it. If the posting is properly posted with the required information, workers will have access to MPN contact information prior to injury.</p>	
9767.12(b)	This subdivision provides language that may be used to implement the requirements as set forth in subdivision (a). Commenter recommends that the changes	Adam Domchik President California Applicants' Attorneys	Reject for the same reasons the proposed language was rejected for subsection (a).	None.

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	described above to subsection (a) be incorporated in the language set forth in subdivision (b).	Association – CAAA May 28, 2010 Written Comment		
9767.12(c)	Commenter recommends that the implementation notice be provided at least 14 (and preferably 30) days before implementation of an MPN, and that this requirement be incorporated in this subdivision also.	Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment	Reject. There is no statutory requirement for a notice period prior to MPN implementation and does not prevent workers from exercising their rights to predesignation or qualify for transfer of care.	None.
9797.12(f)(3)	<p>Commenter believes that the second sentence of this paragraph is confusing and, although it has not been amended in this Notice, he urges the Division to consider revising the sentence to more clearly state its intent. The problem is that the sentence contains multiple clauses separated by the word "or." This convoluted sentence structure can present a problem in interpretation which can lead to disputes, adding unnecessary delay and costs to the system.</p> <p>In order to better implement the intent of this provision, and eliminate this problem, we suggest adoption of the following language in place of the</p>	Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment	<p>Accept for clarity.</p> <p>Accept for clarity</p>	<p>The sentence has been divided into two sentences as proposed.</p> <p>The sentence has been divided into two sentences as</p>

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	<p>second sentence of this paragraph:</p> <p>"An employer or insurer shall ensure covered employees have access to, at minimum, a regional area listing of MPN providers, in addition to maintaining and making available its complete provider listing in writing. If the employee requests an electronic listing, it shall be provided electronically on a CD or on a website. "</p>			proposed.
9767.16(b)	<p>Commenter previously commented on the potential confusion between this subdivision and the new sentence in § 9767.12(a). Commenter also believes that the change to this subdivision to make it applicable only to <u>injured</u> covered employees will create confusion among both employers/insurers and workers. One problem is that there is no definition of an "injured" worker. Who qualifies as an "injured" worker? All workers receiving treatment? All workers with an open claim? All workers with a stipulated award? All workers with an order for future medical treatment? The ambiguity of this term will only create problems and add to costs for</p>	<p>Adam Domchik President California Applicants' Attorneys Association – CAAA May 28, 2010 Written Comment</p>	<p>Reject. The term, "injured worker" is self-explanatory and is used consistent with the use of the term within the rest of the workers' compensation system.</p> <p>Reject. All covered workers will be notified of the</p>	<p>None.</p> <p>None.</p>

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	employers and insurers. With respect to workers, <u>all</u> workers should be provided information about the MPN from which they will be required to receive medical treatment. If the employer or insurer changes that MPN, all workers should be informed of the change. Obtaining information about the authorized physicians in an MPN can be critically important to a worker in determining whether or not to predesignate a treating physician.		implementation of a new MPN through individual notice and through the posting. Only injured workers, who will be most affected by the change of MPNs, will receive the notice of change of MPN to streamline the notice process. The MPN posting should always be available to provide workers with MPN contact information should they desire more information.	